1 2 3 4	Michael B. McDonnell, State Bar No. 107053 Douglas M. Field, State Bar No. 237888 McDONNELL & ASSOCIATES 2040 Harbor Island Drive, Suite 202 San Diego, California 92101 Telephone: (619) 294-4230 Facsimile: (619) 294-4237	
5	Attorneys for PETER BLAIR, JIM SINGLETON, and THE YACHT CLUB, LLC.	
6 7		,
8	UNITED STATES DISTRICT COURT	
9	SOUTHERN DISTRICT OF CALIFORNIA	
10		
11	GREGORY A. STRASBURG, Individually and as )	CASE NO: 08cv0021JLS(BLM)
12	Trustee of the GREGORY A. ŚTRASBURG () REVOCABLE TRUST dated 4/28/2003 ()	DEFENDANTS' REPLY TO
13	Plaintiff,	PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS THE
14	vs.	SECOND, THIRD, FOURTH AND FIFTH CAUSES OF ACTION FOR FAILURE TO STATE A CLAIM
15	M/Y JUST A NOTION, Official Number 1089525, her engines, tackle, furniture and appurtenances, in	UPON WHICH RELIEF CAN BE GRANTED (FRCP 12(b)(6)), or, in the
16 17	rem; PETER BLAIR, in personam; JIM SINGLETON, in personam; and THE YACHT CLUB, LLC., a Nevada Corporation,	alternative, MOTION FOR A MORE DEFINITE STATEMENT
18		Date: March 28, 2008
19	Defendants.	Time: 10:30 Judge: Hon. Janis L. Sammartino
20	)	Dept: Courtroom 6
21	TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:	
22	COMES NOW Defendants PETER BLAIR, JIM SINGLETON, and THE YACHT	
23	CLUB, LLC. for themselves and no other Defendants with their Reply to Plaintiffs Opposition to	
24	Defendants Motion to Dismiss The Second, Third, Fourth, and Fifth Causes of Action for Failure	
25	to State a Claim Upon Which Relief Can Be Granted.	
26	ARGUMENT	
27	Notwithstanding the generally accepted policy of liberality in pleadings, there are certain	
28	REPLY TO OPPOSITION TO MOTION TO DISMISS	08Ccv0021 JLS(BLM)
	THE SECOND, THIRD, FOURTH AND FIFTH CAUSES OF ACTION	1

27

28

1

2

3

4

cases in which a stricter pleading standard is required. Because fraud allegations involve a serious attack on defendants' character, fairness requires that allegations of fraud be plead "with particularity" so that the court can weed out nonmeritorious actions before defendant is required to answer. This is said to be the "last remaining habitat" of Common Law pleading standards. Committee on Children's Television Inc. v. General Foods Corp. (1983) 35C3d 197, 216.

Therefore, every element of the cause of action for fraud must be alleged in full, factually and specifically. The policy of liberal construction of pleading will not be invoked to sustain a pleading defective in any material respect. Wilhelm v. Pray, Price, Willisams & Russell (1986) 186 CA3d 1324, 1332. The particularity requirement necessitates pleading facts that "show how, when, where, to whom and by what means the representations were tendered." Stansfield v. Starkey (1990) 229 CA3d 59, 73.

While Plaintiff argues that discovery is necessary to ultimately reveal all of the fraudulent conduct and those specific persons and/or entities involved in such conduct, such an argument in ignores the well-settled specificity requirement. The substantive elements of fraud are (a) misrepresentation; (b) knowledge of the falsity; c) intent to defraud; (d) justifiable reliance; and (e) resulting damage. It is incongruous then to base a cause of action for fraud on information and belief. Plaintiff, alleging that he justifiably relied upon some statement of the Defendant(s), is in a unique position to know precisely upon what statement he relied, who made the statement, how and when the actionable statement was made. Plaintiffs' conclusory terms do not come close to meeting the specificity requirement.

Further, contrary to Plaintiff's assertions, Committee on Children's Television Inc. does not support their argument. In Committee on Children's Television Inc., where the alleged misrepresentations were numerous and made to many different people, by and through public advertisements, the court upheld the order of the trial court sustaining demurrers to the third, fourth, fifth and sixth causes of action for fraud. While the court noted that for plaintiffs to provide the substance of each advertisement verbatim would be impractical, they stated that the trial court could reasonably require plaintiffs to set out or attach a representative selection of the

REPLY TO OPPOSITION TO MOTION TO DISMISS

08Ccv0021 JLS(BLM)

1

13

11

16

DATED:

08Ccv0021 JLS(BLM)

advertisements. Committee on Children's Television Inc., at 218. A representative section in this regard, is a specific example of the oft repeated representations, and not as Plaintiffs would have this Court believe, merely conclusory allegations.

Conclusory allegations can not be sufficient when pleading actions for fraud. In Goldrich v. Natural Y Surgical Specialties (1994) 25 CA 4th 772, the Plaintiff alleged that a breast implant manufacturer fraudulently represented that their product was safe for use and would not require frequent removal from her body. The Court held that these conclusory terms "did not come close" to the required specificity in a fraud complaint; it cannot be determined what was said or by whom or in what manner (orally or in writing). Goldrich at 783. Here, Plaintiffs make no allegations demonstrating any more specificity than those found to be wholly insufficient by the court in the Goldrich matter.

## **CONCLUSION**

While Plaintiffs are in the unique position to know upon what alleged misrepresentation they relied, they have failed to meet the specificity requirement for pleading causes of action for fraud by failing to allege how, when, where, to whom and by what means the representations were tendered. The general allegations of fraud against PETER BLAIR are wholly insufficient, and Plaintiffs complaint is devoid of any substantive fraud allegations against JIM SINGLETON, and THE YACHT CLUB, LLC. For the foregoing reasons, and those set forth in Defendants underlying motion, Defendants respectfully request that this Court dismiss the second through fifth causes of action for fraud.

McDONNELL & ASSOCIATES, P.C.

THE YACHT CLUB, LLC

Douglas M. Field, Attorney for Defendants

PETER BLAIR, JIM SINGLETON, and

March 18, 2008